IN THE HIGH COURT OF JUDICATURE AT BOMBAY

FIRST APPEAL NO.1162 OF 2004
WITH
CIVIL APPLICATION NO.3372 OF 2003

Shri Surendra Yashwant Kadam .. Appellant

Vs.

Smt. Nayan Surendra Kadam .. Respondent

Mr. A.S. Gadkari for appellant.
Mr. Ambar Joshi i/b S.M. Oak for respondent.

WITH

FIRST APPEAL NO. 1164 OF 2004

Mrs. Nayan Surendra Kadam .. Appellant

Vs.

Mr. Surendra Yeshwant Kadam .. Respondent

Mr. Ambar Joshi for appellant.
Mr. A.S. Gadkari for respondent.

CORAM : P.V. KAKADE, J.

Date : November 24, 2004.

P.C.:

1. Rule. Rule made returnable forthwith by consent of the parties. Both these cross appeals can be conveniently disposed of by common judgment.

2. First Appeal No.1162/04 is filed by aggrieved husband against the Judgment and Order dated 24/3/2003 passed by the II Addl. District Judge, Kalyan

directing permanent alimony of Rs.1000/- to be paid to the respondent-wife. Besides this direction, it was decided that the custody of the child should remain with the appellant-father and respondent-mother was given access to the child on every second Sunday from 5 p.m. to 9 p.m. at appellant's residence. By this appeal only the segment of the order relating to the maintenance is challenged.

. By First Appeal No.1164/04 the wife seeks to challenge the order with regard to the quantum of alimony on the ground that it is too inadequate and, therefore, enhancement is sought therein. She has also sought modification with regard to the direction of access to the child with submission that venue of the meeting should be changed along with timing as directed by the lower Court.

3. I have heard the learned counsel for both the parties and perused the record, including the evidence of both the parties led in the lower Court. It was submitted on behalf of the appellant-husband that the order of permanent alimony for Rs.1000/- was in excess considering the circumstantial evidence showing that the wife's income is much more than which is professed to be received by her. On the other hand the wife has

contended in the cross appeal that the alimony of Rs.1000/- is too inadequate for her maintenance and, therefore, it should be increased.

. In this regard the cross-examination of wife has to be taken into account. According to her, she holds tuition in an institution for five days in a month and receives amount of Rs.1200/- for the said purpose. The Ld. Trial Judge has taken into account this aspect while fixing the quantum of alimony. She has also stated that her mother is living with her and she has no source of income and, therefore, she has also required to maintain her mother who is her dependent. She has further stated that she is residing in flat at Mulund owned by her brother and for that she is required to spend Rs.500/- p.m. towards maintenance. As against this the evidence of the appellant-husband shows that he is serving in Clearance Company and earning Rs.4700/- p.m. and the child is taking education in King George High School for which purpose he has to spend amount of Rs.2000/- to 2500/- p.m. He has admitted that he is in position to save the amount of Rs.1000/- to 1500/- p.m. from his monthly pay after fulfilling all the requirements of himself as well as the child. Taking into account all these aspects the Ld. Trial Judge has fixed the

quantum of alimony of Rs.1000/- p.m., which in my view appears to be just, legal and proper and, therefore, it would require no interference.

4. The learned counsel appearing for wife in cross appeal submitted that venue of meeting of the child should be shifted from the residence of the appellant-husband. However, taking into account relevant aspects, including the wishes of the child which are recorded by the trial court in its judgment, I am of the view that the venue need not be changed. However, the time for meeting the child requires to be modified in view of the fact that the child is residing with her father at Titwala whereas wife is residing at Mulund and, therefore, it would be inconvenient to her to return home after meeting is over at 9 p.m. Therefore, the time for meeting the child should be every second Sunday from 2 p.m. to 6 p.m. instead of 5 p.m. to 9 p.m.

5. In view of these aspects, the First Appeal No.1162/04 stands dismissed with modification regarding the time of meeting. The wife shall have access to the child every second Sunday from 2 p.m. to 6 p.m. at the residence of appellant-husband. Consequently, the cross appeal i.e. First Appeal

No.1164/04 stands disposed of. No order as to cost.

. At this stage it is submitted on behalf of the respondent-wife that no alimony amount has been paid by the husband till today. In this regard it is, therefore, directed that the appellant-husband shall deposit the entire arrears of the permanent alimony at the rate of Rs.1000/- per month as directed by the Lower Court within three months from the date of this order, failing which the respondent-wife shall be at liberty to move either this court or lower court for consequential reliefs.

. In view of this position the C.A. No.3372 of 2003 also stand disposed of.

(P.V. Kakade, J.)